



June 5, 2018

Via E-mail

Superintendent Eric F. Waddell  
School Committee Chair Julie Dow  
Kittery School District  
200 Rogers Road  
Kittery, ME 03904

superintendent@kitteryschools.com  
jdow@kitteryschools.com

Dear Superintendent Waddell and Chair Dow:

I understand that today the Kittery School District will conduct the second reading of the proposed Transgender and Gender Expansive Students Policy (“Policy”). Although I am unable to attend in person, I write to express support for this policy.

I am a Senior Staff Attorney at GLBTQ Legal Advocates & Defenders (“GLAD”). GLAD works in New England and nationally to create a just society free of discrimination based on gender identity and expression, HIV status, and sexual orientation. In Maine, among other work, GLAD has advocated for the enforcement of the Maine Human Rights Act, *Doe v. Reg'l Sch. Unit 26*, 86 A.3d 600, 606 (Me. 2014), and worked for passage of the Maine anti-bullying statute. M.R.S. tit. 20-A, § 6554. GLAD also provided technical assistance to the Portland Public Schools in the crafting of their Transgender and Gender Expansive Student Policy which was unanimously approved in 2017.

This proposed Policy is an excellent one. Importantly, this Policy ensures that the Kittery School District complies with the Maine Human Rights Act. Furthermore, the Policy aims to create a safe and inclusive educational environment for all students, and such an environment is not only required by law but is critical to the educational success and long-term well-being of the students in Kittery Schools.

Under established Maine law, schools are prohibited from discriminating on the basis of sexual orientation, which includes gender identity and expression, in any academic, extracurricular, athletic, research, or any other program or activity. M.R.S. tit. 5 §§ 4552, 4553, 4601. Furthermore, Maine laws protect students from bullying within their schools. *See* M.R.S. tit. 20-A, § 6554. This law provides that “all students have the right to attend public schools that are safe, secure and peaceful environments” without being singled out because of qualities such as gender identity and sexual orientation. *Id.* With detailed obligations imposed on schools, the law is empathetic about the drive for schools to ensure safe and inclusive

environments for all children.<sup>1</sup> School committees, superintendents, faculty, and staff all bear responsibility for promoting safe and inclusive school communities.

Despite these legal protections, Maine has considerable work to do to create an inclusive atmosphere for its transgender and gender expansive students. Because youth spend the majority of their time in schools, “their experiences in the classroom, in the halls, at lunch and during extracurricular activities can have a critical impact on their overall health and well-being.”<sup>2</sup> In 2015, the National Center for Transgender Equality conducted the largest survey of transgender people in the United States. In their Maine state report, NCTE concluded that 80% of students who were openly transgender or perceived as transgender reported being prohibited from dressing according to their gender identity, being disciplined more harshly than their cisgender<sup>3</sup> peers, along with other forms of mistreatment.<sup>4</sup> The Policy is important because it ensures that policies and practices will be in place at Kittery Schools that turn legal protections into practical realities for students. With the approval of this Policy, the Kittery School District will be a leader in ensuring the full inclusion of transgender students within their schools.

Importantly, this Policy strikes a thoughtful balance and understanding of the interdependence of all those connected to the school community, including parents, students, and school staff. The Policy provides definitions so that everyone understands gender expansive identities and can communicate through a common language. For students and families who need additional support regarding gender identity and issues that may arise at school, the school district will develop individualized support plans for those students, working with them and their families to address individual needs. The Kittery Policy provides clear guidelines for respecting the privacy of students, using preferred pronouns, and ensuring inclusive academic programs. The Policy also properly address situations where a student and a parent may disagree over the student’s gender identity and recognizes the school’s obligation to create a safe and inclusive environment by supporting the student’s gender identity while at school. The Policy draws from the guidance created by the Maine Human Rights Commission (“MHRC Guidance”), which directs application of the state non-discrimination laws in schools.<sup>5</sup> The MHRC Guidance is entitled to deference because the guidance was created to interpret “a statute that an administrative agency administers and that is within its area of expertise.”<sup>6</sup> The Kittery

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<sup>1</sup> Schools that allow biased language within the educational environment create a damaging experience for their students. Students in schools with LGBT-inclusive policies have reported feeling safer and securer within their school systems. Giga et. Al., *From Teaching to Torment: School Climate Revisited* 13, 42 (GLSEN 2016), available at

[https://www.glsen.org/sites/default/files/TeasingtoTorment%202015%20FINAL%20PDF%5B1%5D\\_0.pdf](https://www.glsen.org/sites/default/files/TeasingtoTorment%202015%20FINAL%20PDF%5B1%5D_0.pdf)

<sup>2</sup> Human Rights Campaign, *2018 LGBTQ Youth Report*, 2018, available at:

<https://www.hrc.org/resources/2018-lgbtq-youth-report>

<sup>3</sup> ‘Cisgender’ refers to a person whose gender identity matches the gender that they were assigned at birth

<sup>4</sup> National Center for Transgender Equality, *2015 U.S. Transgender Survey: Maine State Report* (2017), available at <http://www.transequality.org/sites/default/files/docs/usts/USTSMESStateReport%281017%29.pdf>

<sup>5</sup> MHRC Guidance states that with regard to gender expansive students, schools should, “use the preferred name and pronouns consistent with their gender identity on all documents.” Further, it requires that schools, when possible, “abide by the wishes of the student with regard [to] their gender identity and expression while at school.” Memorandum of the Maine Human Rights Commission, Amy Snierston, Executive Director, *Interpretation of the Education Provisions of the MHRA* (Jan. 13, 2016)

<sup>6</sup> *Roderick v. State*, 79 A.3d 368, 372-373 (Me. 2013). The Maine Human Rights Commission administers the Maine Human Rights Act. M.R.S tit. 5, § 4566.

Schools' Policy is properly grounded in Maine law and administrative guidance, while ensuring that the Policy addresses the needs of those in the District.

Thank you for the opportunity to comment on the Transgender and Gender Expansive Student Policy, and if you have any questions, please do not hesitate to contact me at [pcrozier@glad.org](mailto:pcrozier@glad.org) or 617-426-1350.

Sincerely yours,

A handwritten signature in black ink, consisting of a stylized capital 'P' followed by a long horizontal line that tapers off to the right.

Patience Crozier, Esq.  
Senior Staff Attorney

cc: Mary L. Bonauto, Civil Rights Project Director